



**TOWN OF TEWKSBURY
CONSERVATION COMMISSION
999 Whipple Road
Tewksbury, MA 01876**

Stephen Deackoff, Chairman
Anthony Ippolito, Vice-Chair
Sean Czarniecki, Clerk
Dennis Sheehan
Carolina Linder

**MEETING MINUTES
March 5, 2014**

The meeting was called to order by Steve Deackoff, Chairman at 7:00 p.m. at the Pike House (temporary Town Hall). Present were Sean Czarniecki, Anthony Ippolito, and Dennis Sheehan. Also present was Kyle Boyd, Conservation Agent, and Melissa Johnson, Recording Secretary.

Carolina Linder was not present.

Approval of Meeting Minutes January 8, 2014, January 22, 2014, and February 19, 2014

MOTION: Mr. Czarniecki made the motion to approve the January 8, 2014 meeting minutes; seconded by Mr. Ippolito and the motion carried 4-0.

MOTION: Mr. Czarniecki made the motion to approve the January 22, 2014 meeting minutes; seconded by Mr. Ippolito and the motion carried 4-0.

MOTION: Mr. Czarniecki made the motion to approve the February 19, 2014 meeting minutes; seconded by Mr. Ippolito and the motion carried 3-0-1. Mr. Deackoff did not take part in this vote as he was not present at the February 19, 2014 meeting.

A) Notice of Intent, Marc P. Ginsburg & Sons, 379 & 357 Pleasant Street, Map 32, Lots 36 & 37, DEP #305-964

Present was Steven Erickson of Norse Environmental Services, Jim Hanley of Civil Design Consultants, Marc Ginsburg, and Matthew Ginsburg.

Mr. Erickson provided the members with a plan of the site and explained that the Commission members reviewed this matter for an ANRAD several months ago. The work that will be done within the buffer zone includes some small grading on Lot 5, construction of a dwelling on Lot 4, and construction of an infiltration basin on the open space parcel. Mr. Erickson noted that there is very little work being done within the buffer zone and they meet the 80% removal of total suspended solids coming into the detention pond. Weston and Sampson have reviewed the matter and they noted that there were no four foot sumps. Mr. Erickson explained that this was the only item raised that relates to the Commission and will be corrected.

Mr. Hanley noted the applicant recently noticed that there was a deck on the back of the structure that could pose a problem as part of the ANRAD process they agreed to maintain 100 feet from the stream. The deck has been removed from the plan. Mr. Hanley explained that more than half of the lot is open space. Only approximately 3.3 acres of the 9.7 total acres will be disturbed. Mr. Hanley explained that they are also petitioning the town to reduce the size of the roadway to further reduce the impact of the impervious surface.

Mr. Czarniecki asked if the deck shown on the plan is being eliminated and if the four bay question has been addressed and Mr. Ginsburg confirmed this. Mr. Czarniecki explained that he would prefer to see the final plans with the four foot sumps and deck removed prior to taking action on this item. Mr. Hanley explained that Weston and Sampson requested more detail and they will be providing this. Mr. Erickson noted that it does meet the design requirements. Mr. Czarniecki asked who will be in charge of the operating and maintenance of the detention pond in the future and Mr. Ginsburg explained that the town will be responsible. Mr. Erickson explained that the current data states that nothing has to be done to an infiltration pond after it stabilizes for approximately 20 years with the exception of trash removal, debris, etc.

Mr. Deackoff asked if there will be a homeowner's association and Mr. Ginsburg explained that there will not be a homeowner's association.

Mr. Sheehan asked what the elevation is on Pleasant Street. Mr. Hanley approximately 128.

Mr. Deackoff suggested continuing this matter until the revised plans are received. Mr. Ginsburg explained that he has been working with Steve Sadwick, Director of Community Development, and the Planning Board and everyone has agreed to determine all of the revisions first and then make one final change to the plan. Mr. Erickson explained that aside from the four foot sumps, the items that will be changed are outside of the buffer zone and Commission's jurisdiction. Mr. Ginsburg requested the Commission issue their decision contingent upon receipt and review of the revised plan.

Mr. Deackoff opened the hearing to the public.

Larry Lavargna of 254 Marshall Street came forward and explained that he and his wife have lived in their home for over 23 years and have seen three different building developments brought forward with three detention ponds that have been constructed on abutting or nearby properties in which the roadway surface runoff is collected and then directed to Marshall Brook. Mr. Lavargna feels the wetlands on his property remain vulnerable to this runoff as does Long Pond; into which Marshall Brook feeds. Mr. Lavargna argued that the tail water created is now in excess of the soil infiltration rate; which has had a devastating impact on his property by changing the hydrology of the soil from useable and enjoyable woodlands to a wet matter. Mr. Lavargna noted that he estimates much more than 0% runoff and explained that as the tree roots have suffocated under the water the trees have since died and fall when the wind blows. Mr. Lavargna explained that mitigating effects for past building projects were acknowledged, but considered off site issues. At that time Planning Director, Sean Sullivan, stated surface

water will not drain onto adjacent properties of now owned abutters in such a manner as to create drainage problems. Mr. Lavargna noted that he is concerned with his septic function which is being threatened. A wetland area review was completed ten years ago on an abutting property and Wetland Scientist, Bill Manuel, noted that Marshall Brook is indicated as a perennial stream on most US GIS maps. Accordingly, the regulations presume that the brook is perennial and therefore has riverfront associated with it. The ANRAD seeks the determination of an intermittent stream, but does provide any evidence to rebut the regulatory presumption. Mr. Lavargna requests that the 200 foot river front zone be enforced based on these findings and that the extent of the river front area depicted on the plan "Marshall Brook" was considered perennial even during a drought watch in February and May during which the studies were conducted. Mr. Lavargna noted that a superseding Order on a recent Debra Drive project was granted by Walter Polchlopek, who was the Conservation Agent at the time, and the town unlawfully issued a Certificate of Compliance. The State did not because a number of conditions were not met including signed affidavits prepared by an engineer registered in Massachusetts stating that the detention basin has been constructed as proposed. The State issued a Notice of Non Compliance and an enforcement action has since been issued. Mr. Lavargna feels there is now an increased area of bordering land subject to flooding due to the low topography on the adjacent lands and to Marshall Street that was worsened by the increased compression from the building, fill, and higher water table and feels this is why there is a need for a sewerage pump on Marshall Street. Mr. Lavargna explained that the two most recent homes that were constructed in this area needed to be constructed on mounds of earth to comply with septic function. Mr. Lavargna noted that Tewksbury also has an unusually high number of vernal pools with 98 potential sites being indicated. Mr. Lavargna explained that he is requesting consideration from the Commission, and if the roadway waiver is granted, that the maximum of 5,000 square foot limit on alterations be enforced and indicated on the plan. Mr. Lavargna noted that he can provide any necessary documentation to support the statements he made.

Mr. Deackoff asked if the detention basin on Debra Drive has been fixed and Mr. Lavargna explained that it has not been fixed; a Notice of Non Compliance was issued and was followed by an enforcement order as they declined to fix it. Mr. Lavargna noted that the land has been devastated; the developer tried to say the devastation was the result of a beaver dam; however, the Town of Billerica had conducted a study and it was determined that there are no beaver dams in the area. Mr. Deackoff explained that Debra Drive is an offsite issue and the Commission can only address this particular property. Mr. Deackoff explained that there are two different independent reviewers, Engineer and Wetland Consultant. The applicant did apply for an ANRAD and did provide evidence that this portion of Marshall Brook be declared as intermittent. Mr. Deackoff asked if Mr. Lavargna was notified of the ANRAD and he stated he was not. Mr. Boyd will look into this.

Mr. Deackoff requested Mr. Lavargna provide the information he has presented tonight so that the Commission and their consultants can review it. Mr. Lavargna confirmed he will provide this information to Mr. Boyd.

Mr. Deackoff explained that the proposal is to discharge the overflow into the wetlands and not the brook. Mr. Hanley noted that the overflow happens likely during a two year storm. The outlet is approximately 75 feet away from the wetland line which will provide treatment prior to reaching the wetlands.

Mr. Deackoff explained that the infiltration is outside the 50 foot no build zone and during most rain events, the runoff will go into the infiltration basin and recharge the area. The area will overflow, discharge upland, disburse, and then flow into the wetland; which is similar to what currently happens. There is very little maintenance and all reviewing engineers feel it will function if maintained properly. Mr. Deackoff noted that it is more than likely that this project will not contribute to any of the existing flooding problems.

Discussion took place on an open space residential development subdivision as opposed to a conventional subdivision. Mr. Deackoff requested Mr. Boyd speak with the town engineer regarding the issues on Debra Drive.

Alan Wiggin of 329 Pleasant Street came forward and noted that he has resided at his home for 5 years. Mr. Wiggin noted that there is a stream at the rear of his property and expressed the same concerns as Mr. Lavargna with regards to increased water and flooding. Mr. Deackoff asked if Mr. Wiggin was notified of the ANRAD and he stated that he was not. Mr. Boyd noted that both Mr. Lavargna and Mr. Wiggin are listed on the abutters list and he will look into this further.

Mr. Ginsburg explained that at the ANRAD meeting, he committed to the Commission that they would maintain a 100 foot no construction from the brook.

Mr. Wiggin asked if the consultants look at all of the detention ponds in the area or only those within the OSRD and Mr. Erickson explained that they only review those included within the development.

Mr. Deackoff provided Mr. Wiggin with a copy of the two review letters from the consultants.

Mr. Czarniecki expressed concerns with the 25 foot no disturb being the edge of lawn on Lot 4 as future homeowner's may not understand and maintain this area. Mr. Czarniecki suggested Bernstein Markers be put in place and Mr. Ginsburg confirmed this will be done.

Mr. Deackoff suggested continuing this matter until the final plan is received.

MOTION: Mr. Ippolito made the motion to continue Notice of Intent, Marc P. Ginsburg & Sons, 379 & 357 Pleasant Street, Map 32, Lots 36 & 37, DEP #305-964 to March 19, 2014 at 7:02 p.m.; seconded by Mr. Sheehan and the motion carried 4-0.

B) Request to Amend Abbreviated Notice of Resource Area Delineation, Bella Woods, LLC, East Street, Map 89, Lots 23 & 24, DEP #305-920.

Mr. Deackoff recused himself. Mr. Ippolito conducted the meeting.

Present was Steven Erickson of Norse Environmental Services, Arnie Martel, and Dick Cuoco. Mr. Erickson provided the members with a plan of the site and explained that the property is currently under construction. During the construction process, concerns arose about some of the wetland boundaries in the area. Mel Higgins of Weston and Sampson has reviewed the matter on behalf of the Commission and some minor changes have been made. Mr. Erickson reviewed the changes which include the isolated wetland area in the front that was determined not to be a vernal pool. They found that they were about 20 to 25 feet off. Mr. Erickson explained that they are requesting approval for these changes.

Mr. Ippolito noted that he and Mr. Boyd visited the site and the changes are minor.

Mr. Ippolito opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Czarniecki made the motion to close the public hearing portion; seconded by Mr. Sheehan and the motion carried 3-0.

MOTION: Mr. Czarniecki made the motion to approve Request to Amend Abbreviated Notice of Resource Area Delineation, Bella Woods, LLC, East Street, Map 89, Lots 23 & 24, DEP #305-920, reference shall be made to the plan dated January 16, 2014; seconded by Mr. Sheehan and the motion carried 3-0.

Mr. Deackoff returned.

C) Notice of Intent, James Regan, 47 Riverdale Road, Map 98, Lot 150, DEP #305-965

Mr. Deackoff explained that an agreement was made at the previous meeting regarding the plans for this proposal, but the DEP number had not yet been issued. The public hearing portion was closed at the previous meeting.

Mr. Czarniecki noted that he would like to ensure that the Order of Conditions provides protection for the storm drains and suggested a silt sock be put in place.

MOTION: Mr. Ippolito made the motion to approve Notice of Intent, James Regan, 47 Riverdale Road, Map 98, Lot 150, DEP #305-965, silt sock shall be put in place around the catch basins, a \$1,000.00 bond shall remain in place until a Certificate of Compliance has been issued; seconded by Mr. Sheehan and the motion carried 4-0.

D) Non substantial Change Request, John Berube, John Paul Construction, 2543 Main Street, Map 94, Lots 63, DEP#305-921

Mr. Boyd explained that Mr. Berube's original proposal was to demolish the structure and reconstruct in the same footprint. However, once construction began it was determined that the home could be renovated.

Mr. Ippolito noted that a shed in the rear of the property was also removed and the debris has been removed.

MOTION: Mr. Ippolito made the motion to approve Non Substantial Change Request, John Berube, John Paul Construction, 2543 Main Street, Map 94, Lots 63, DEP#305-921; seconded by Mr. Sheehan and the motion carried 4-0.

New Business

Approval of Invoice

Mr. Boyd explained that Ms. Linder attended two classes at a cost of \$55.00 each and is seeking reimbursement from the Wetland Protection Fund.

MOTION: Mr. Ippolito made the motion to reimburse Carolina Linder in the amount of \$110.00 from the Wetland Protection Fund for her attendance at two classes; seconded by Mr. Sheehan and the motion carried 4-0.

Mr. Ippolito explained that he recently attended a class with Mr. Boyd and they were speaking with an Attorney McGregor who suggested the members have identification or business cards as well as take pictures at the sites when site visits are made. Mr. Deackoff noted that the Commission used to have vests to wear on site visits. Mr. Ippolito requested the Commission be provided with business cards or identification including their names, phone numbers, photograph, etc. Discussion took place on what phone number would be given. Mr. Boyd noted that he has given some thought to the business cards and over time this could get costly as members change and suggested a general badge/identification. Mr. Boyd explained that Attorney McGregor also suggested notifying the property owner prior to going onto the property to obtain consent as nothing would be admissible should the matter go to Court because they were not wanted on the property. Mr. Deackoff noted that the application is consent and Mr. Czarniecki confirmed this. Mr. Boyd will look into these matters.

Present was Stanley Folta. Mr. Folta requested to speak and Mr. Deackoff granted this request. Mr. Folta explained that he brought this subject up to the Town Manager, Richard Montuori, and the Community Development Director, Steve Sadwick, while he was a member of the Commission and was told no they will not issue badges or ids. Mr. Folta explained that years ago the Commission members would go to the police station to get a picture taken and were issued identification.

Old Business

There was no old business.

Administrator's Report

Mr. Boyd explained that he and Mr. Sadwick are working to make the open space conveyance an easier process. Mr. Sadwick has provided the Commission with correspondence regarding this matter. There are two open space parcels that were to be deeded to the Conservation Commission and were not done. Mr. Sadwick letter to the Commission requesting they accept these parcels.

MOTION: Mr. Ippolito made the motion to accept the open space parcels relative to the Ames Run Subdivision and April's Way contingent upon review by Town Counsel; seconded by Mr. Sheehan and the motion carried 4-0.

Mr. Czarniecki discussed the detention basins that the town is responsible for maintaining and suggested looking into an operating and maintenance plan. Mr. Deackoff noted that this was part of the software that the previous conservation administrator was looking in to. Mr. Boyd noted that the funds were appropriated for the software, but it was not purchased. Mr. Folta explained that the software was not purchase because there was an issue with the server and Mr. Montuori said no. Mr. Boyd will look into this.

Adjournment

MOTION: Mr. Ippolito made the motion to adjourn; seconded by Mr. Czarniecki and the motion carried 4-0.

Approved: 4/23/14

List of documents for 3/5/14 Agenda
Documents can be located at the Community Development Office

Approval of Meeting Minutes-January 8, 2014
Approval of Meeting Minutes-January 22, 2014
Approval of Meeting Minutes-February 19, 2014

- A. 7:02 P.M.** **Notice of Intent**, Marc P Ginsburg & Sons, 379 & 357 Pleasant Street, Map 32 Lots 36 & 37, DEP # 305-964
- *Request for Continuance letter dated 2/13/14*
 - *Open Space Residential Design Plans dated 2/6/2014*
 - *Notice of Intent packet dated February 2014*
 - *Drainage Report dated 2/07/14*
 - *Abbreviated Notice of Resource Area Delineation dated November 2013*
 - *Review letter from James Pearson of Weston & Sampson dated 3/3/14*
 - *Review letter from Mel Higgins from Weston & Sampson dated 3/3/14*
 - *Presentation Sketch submitted by Civil Design dated 3/5/14*
- B. 7:05 P.M** **Request to Amend Abbreviated Notice of Resource Area Delineation**, Bella Woods LLC, East Street, Map 89 Lots 23 & 24, DEP #305-920
- *Abbreviated Notice of Resource Area Delineation packet dated 2/3/14*
- C. 7:07 P.M** **Notice of Intent**, James Regan, 47 Riverdale Road, Map 98 Lot 150, DEP # 305-965
- *WPA Form 3 Notice of Intent dated 2/5/14*
- D. 7:09 P.M** **Non Substantial Change Request**, John Berube, John Paul Construction, 2543 Main Street, Map 94 Lot 63, DEP # 305-921
- *Site Plans dated 09/19/2011*